IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 1139 of 2004
Date of decision 11.10 .2007

M/s Indian Sulphacid Industries Limited and another .. Petitioner

Versus

Union of India and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Naveen Mahajan, Advocate for the petitioner
Mr.Tribhuwan Dahiya, Advocate for the respondents .

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 2.9.2003 (Annexure P.7) passed by the Commissioner Central Excise (Appeals) Delhi III, Udyog Minar Vanijya Nikunj Udyog Vihar, Phase V, Gurgaon dismissing the appeal filed by the petitioner by opining that it was barred by time. A further prayer has also been made directing the Commissioner (Appeals)- respondent no.3 to decide the appeal on merits after considering the prayer of the petitioner for condoning the delay in filing of appeal.

Brief facts of the case are that the petitioner was served with a show cause notice dated 13.3.2001 and a duty of Rs. 17,49,068/- for the assessment years 1995-96 and 1996-97 was claimed. It was alleged that production of Sulphuric Acid and Alum Ferric falling under Chapter 28 of the schedule to the Central Excise Act, 1985 has been suppressed by the petitioner. The basis of the charge was a comparative study of the figure of production reported in schedule “O” attached to the balance sheet for the years 1995-96 and 1996-97 vis.a.vis the production reported in the statutory records maintained by the petitioner. The Chairman of the petitioner-

company made a statement explaining the difference in production figures and explained that the stock in process was also taken as finished goods in the balance sheets for window dressing required for banking and other purposes. However, the Adjudicating Authority vide order dated 5.9.2001 (28.8.2001 ?) has confirmed the demand of central excise duty amounting to Rs. 17,49,068/- under Rule 9(2) of the Erstwhile Central Excise Rules, 1944 read with Section 11 A(1) of the Central Excise Act, 1944 (for brevity 'the Act'). He also imposed penalty of equal amount under Rule 173-Q of the Rules read with Section 11 AC of the Act and further imposed personal penalty of Rs. 3,00,000/- upon petitioner No.2 and Rs. 1.50,000/- upon the Manager of the company under Rule 209 A of the Rules. The petitioner filed an appeal before the Commissioner Central Excise (Appeals) who dismissed the appeal vide order dated 2.9.2003 (Annexure P.7) by holding that the appeal was time barred and the same could not have been filed beyond the period of 90 days. The views of the Commissioner is discernible from para 4 and the same reads as under:

> " I have considered the matter. In this case the Order-in-Original was received by the appellants on 20.12.2002 (which itself appears to be quite abnormal) and the appeal has been filed on 1.7.2003. Thus the appeal has been filed after the expiry of six months and eleven days from the date of receipt of the impugned order by the appellant. As per Section 35 of the Central Excise Act,1944, an appeal could be filed within 60 days from the date of receipt of the order by the appellant which could be further extended by the Commissioner (Appeals) by another 30 days. There is no provision under this

section for filing the appeal beyond 90 days (60 days + 30 days). The appeals filed by both the appellants are thus clearly time barred and hence rejected on the grounds of limitation."

When the matter came up for consideration before this Court on 23.1.2004, learned counsel for the petitioner had wrongly made a statement that the delay in filing of the appeal under Section 35 of the Act beyond 90 days could not be condoned and the writ petition was dismissed. However, after filing of S.L.P. before Hon'ble the Supreme Court, the petitioner filed Review Application No.3 of 2006 in the instant petition which was allowed vide our order dated 5.9.2007. While disposing of the Review Application vide our order dated 5.9.2007 we have considered the question as to whether Section 5 of the Limitation Act, 1963 (for brevity 'the 1963 Act') would apply to the provisions of Section 35 of the Act and have held that the provisions of Section 5 of the 1963 Act would apply to Section 35 of the Act by virtue of judgements of Hon 'ble the Supreme Court in the cases of Union of India v. M/s Popular Construction Co. (2001)8 SCC 470; Vidyacharan Shukla v. Khubchand Baghel AIR 1964 SC 1099 and Hukamdev Narain Yadav v. Lalit Narain Mishra (1974) 2 SCC 133.

For all the reasons given in our order dated 5.9.2007, we deem it just and proper to set aside the impugned order dated 2.9.2003 (Annexure P.7) passed by the Commissioner (Appeals) and direct the Commissioner (Appeals) to consider the case of the petitioners by taking into account the fact as to whether the petitioners were prevented by sufficient cause from filing the appeal. If the Commissioner (Appeals) finds sufficient cause for delay in filing of the appeal within the meaning of Section 5 of the 1963 Act then he will proceed to decide the appeal on

merits. The petitioners are also granted liberty to file an appropriate application to explain the delay in filing of appeal. Accordingly, the parties, through their counsel, are directed to appear before the Commissioner (Appeals) on 29.10.2007. The petition stands disposed of accordingly.

Copy of the order be given dasti on payment of usual charges.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

11 .10.2007
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